

1 _____ BILL NO. _____

2 INTRODUCED BY _____
 3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO BUSINESS FILINGS WITH THE
 5 SECRETARY OF STATE; REQUIRING ACCEPTANCE OF PAPER FORMS AND CHECKS; REVISING
 6 RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-15-401, 2-15-404, 2-15-405, 30-9A-501, 30-9A-
 7 526, 30-13-203, 30-13-206, 30-13-207, 30-13-209, 30-13-210, 30-13-211, 30-13-213, 30-13-311, 30-13-313,
 8 30-13-315, 30-13-318, 35-2-114, 35-2-119, 35-2-212, 35-2-225, 35-2-226, 35-2-227, 35-2-305, 35-2-306, 35-2-
 9 307, 35-2-529, 35-2-611, 35-2-720, 35-2-723, 35-2-724, 35-2-822, 35-2-826, 35-2-831, 35-2-904, 35-2-1108,
 10 35-2-1112, 35-3-203, 35-3-207, 35-3-209, 35-4-110, 35-4-206, 35-4-209, 35-4-411, 35-5-201, 35-5-203, 35-6-
 11 201, 35-6-203, 35-7-106, 35-7-107, 35-7-108, 35-7-109, 35-7-110, 35-7-111, 35-7-112, 35-8-205, 35-8-912, 35-
 12 10-111, 35-10-113, 35-10-701, 35-10-715, 35-10-718, 35-10-719, 35-10-721, 35-10-722, 35-12-614, 35-14-
 13 120, 35-14-121, 35-14-124, 35-14-130, 35-14-141, 35-14-1621, 35-15-201, 35-15-204, 35-15-205, 35-15-305,
 14 35-15-504, 35-16-204, 35-17-202, 35-17-203, 35-17-204, 35-17-504, 35-18-201, 35-18-204, 35-18-205, 35-18-
 15 206, 35-18-401, 35-18-402, 35-18-404, 35-18-405, 35-18-501, AND 35-20-103, MCA."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
 19 **Section 1.** Section 2-15-401, MCA, is amended to read:

20 **"2-15-401. Duties of secretary of state -- authority.** (1) In addition to the duties prescribed by the
 21 constitution, the secretary of state shall:

22 (a) attend at every session of the legislature for the purpose of receiving bills and resolutions and
 23 to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either
 24 of them;

25 (b) keep a register of and attest the official acts of the governor, including all appointments made
 26 by the governor, with date of commission and names of appointees and predecessors;

27 (c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other
 28 public instruments to which the official signature of the governor is required;

- (d) record in proper books all articles of incorporation filed in the secretary of state's office;
- (e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to take and file receipts for all books distributed by the county clerk;
- (f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;
- (g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;
- (h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;
- (i) file in the secretary of state's office descriptions of seals in use by the different state officers;
- (j) discharge the duties of a member of the board of examiners and of the board of land commissioners and all other duties required by law;
- (k) register marks as provided in Title 30, chapter 13, part 3;
- (l) report to the legislature in accordance with 5-11-210 all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;
- (m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application;
- (n) establish and maintain a central filing system that complies with the requirements of a central filing system pursuant to 7 U.S.C. 1631 and use the information in the central filing system for the purposes of 7 U.S.C. 1631.
- (2) ~~The Subject to the provisions of subsection (3), the~~ secretary of state may:
- (a) develop and implement a statewide electronic filing system as described in 2-15-404;
- (b) adopt rules for the effective administration of the secretary of state's duties relating to the Montana Administrative Procedure Act established in Title 2, chapter 4.
- (3) At the request of an individual, the secretary of state shall provide a paper copy of any form or other document otherwise furnished by the secretary of state pursuant to Titles 30 and 35, and the secretary of state shall provide notice to the public that paper copies are available on request."

1

2 **Section 2.** Section 2-15-404, MCA, is amended to read:

3 **"2-15-404. Electronic filing system -- requirements -- rules.** (1) As authorized by 2-15-401 and
4 subject to the provisions of 2-15-401(3), the secretary of state may develop and implement a statewide
5 electronic filing system to accommodate the electronic filing of records and documents that are required to be
6 filed in the office of the secretary of state.

7 (2) If the secretary of state develops and implements a statewide electronic filing system, the
8 secretary of state shall establish a central database for all records and documents filed electronically with the
9 secretary of state.

10 (3) If the secretary of state develops and implements a statewide electronic filing system, the
11 secretary of state shall adopt rules that:

12 (a) provide procedures for entering data;

13 (b) provide security and protection of information in the system and monitor the database and
14 other components of the system to ensure that unauthorized entry is precluded;

15 (c) require standardized information for entry into the system;

16 (d) prescribe an identification procedure for a person filing records or other documents or
17 otherwise accessing the system;

18 (e) require each individual who is required to sign a document that is filed electronically to be
19 specifically identified as acknowledging the document and giving assent to the electronic filing through an
20 identification procedure unique to that individual;

21 (f) prescribe a procedure for certification of electronic filings by the secretary of state; and

22 (g) prescribe a procedure for converting an electronic filing to a paper copy and for certifying the
23 paper copy for a person requesting a paper copy.

24 (4) The secretary of state shall cooperate with the department of administration in the development
25 of any electronic filing system. The filing system must comply with the standards established pursuant to 2-17-
26 512.

27 (5) This section may not be construed to affect any requirement that a particular individual or
28 officer of an organization acknowledge a document. Any person using an identification procedure in place of a

1 signature or facsimile signature for any electronic filing is subject to the same civil and criminal penalties
2 applicable to a person providing a signature or facsimile signature.

3 (6) An electronic filing system developed and implemented under this section may be constructed
4 in phases as resources and technology allow."

5

6 **Section 3.** Section 2-15-405, MCA, is amended to read:

7 **"2-15-405. Fees charged by secretary of state -- deposit to account -- rulemaking.** (1) The
8 secretary of state shall, for fees charged by the secretary of state, set by administrative rule each fee
9 authorized by law.

10 (2) Unless otherwise specified by law, fees:

11 (a) must be commensurate with the overall costs of the office of the secretary of state; and

12 (b) must reasonably reflect the prevailing rates charged in the public and private sectors for similar
13 services.

14 (3) The secretary of state shall maintain records sufficient to support the fees established pursuant
15 to this section.

16 (4) Except as otherwise provided by law, fees collected by the secretary of state must be
17 deposited to an account in the enterprise fund type to the credit of the secretary of state. All income and interest
18 earned on money in the account must be credited to the account.

19 (5) The secretary of state shall accept payment of fees required by Titles 30 and 35 by check. "

20

21 **Section 4.** Section 30-9A-501, MCA, is amended to read:

22 **"30-9A-501. Filing office.** (1) Except as otherwise provided in subsection (2), if the local law of this
23 state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement
24 to perfect the security interest or agricultural lien is:

25 (a) the office designated for the filing or recording of a mortgage on the real property if:

26 (i) the collateral is as-extracted collateral or timber to be cut; or

27 (ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to
28 become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

(3) The office in which a financial institution is required to file an effective financing statement, as defined in 7 U.S.C. 1631, is the office of the secretary of state.

(4) Documents filed with the secretary of state may be filed in paper form pursuant to 2-15-401(3)."

Section 5. Section 30-9A-526, MCA, is amended to read:

"30-9A-526. Filing-office rules. (1) ~~The~~ Subject to the provisions of 2-15-401(3), the secretary of state shall adopt and publish rules to carry out the provisions of this chapter. The filing-office rules must be:

(a) consistent with this chapter; and

(b) adopted and published in accordance with Title 2, chapter 4.

(2) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules shall:

(a) consult with filing offices in other jurisdictions that enact substantially this part;

(b) consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and

(c) take into consideration the rules and practices of and the technology used by filing offices in other jurisdictions that enact substantially this part."

Section 6. Section 30-13-203, MCA, is amended to read:

"30-13-203. Application for registration of assumed business name. A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms

furnished by the secretary of state in accordance with 2-15-401(3), an application for registration of the assumed business name, including but not limited to the following information:

- (1) the name and business mailing address of the applicant;
- (2) the complete proposed assumed business name; and
- (3) a description of business transacted under the proposed assumed name."

Section 7. Section 30-13-206, MCA, is amended to read:

"30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state in accordance with 2-15-401(3), the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) If the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration."

Section 8. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. An application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state, subject to the provisions of 2-15-401(3). The application must include but is not limited to the following information:

- (1) the complete assumed business name;
- (2) the name and business mailing address of the applicant; and
- (3) a description of business transacted."

Section 9. Section 30-13-209, MCA, is amended to read:

"30-13-209. Amendment. An amendment to registration of an assumed business name must be filed

- 1 with the secretary of state, subject to the provisions of 2-15-401(3), within 1 year after any one of the following
- 2 events occurs:
- 3 (1) there is a change in the name or identity of the person or persons transacting or having interest
- 4 in the business for which the name is registered;
- 5 (2) there is a change in the description of the business transacted;
- 6 (3) a person having an interest in the business with a registered assumed business name
- 7 withdraws from the business or dies; or
- 8 (4) the registrant wishes to change the name of a registered assumed business name."
- 9

10 **Section 10.** Section 30-13-210, MCA, is amended to read:

11 **"30-13-210. Filing amendment to registration of assumed business name -- issuance of**

12 **certificate.** (1) An application for amended registration of an assumed business name must be filed with the

13 secretary of state, subject to the provisions of 2-15-401(3), and must include:

- 14 (a) the complete assumed business name prior to adoption of the amendment;
- 15 (b) the complete new assumed business name, if applicable;
- 16 (c) the name and address of the registrant, including street name and number of the registrant's
- 17 business office;
- 18 (d) if the name of any person having an interest in the business with a registered assumed
- 19 business name is to be changed, the new name of the person having an interest in the business with the
- 20 registered assumed business name;
- 21 (e) if a person who has had an interest in a business with a registered assumed name withdraws
- 22 or dies, a statement that the person has withdrawn or died;
- 23 (f) a statement that the amended registration of assumed business name supersedes the original
- 24 registration and all amendments to the original registration; and
- 25 (g) all other information determined by the secretary of state to be necessary.
- 26 (2) If the secretary of state finds that the application for amended registration of the assumed
- 27 business name complies with this part and that all applicable fees have been paid, the secretary of state shall:
- 28 (a) endorse on the application for amendment the word "filed" and the date on which the

- 1 application for amendment was filed;
- 2 (b) file the original application for amendment in the secretary of state's office; and
- 3 (c) issue a certificate of amendment to the registrant.
- 4 (3) If the registrant of an assumed business name fails to comply with the requirements of this
- 5 section, the secretary of state shall cancel the registration."
- 6

7 **Section 11.** Section 30-13-211, MCA, is amended to read:

8 **"30-13-211. Reservation of proposed assumed business name.** Any authorized person who has

9 not commenced business but intends to commence business may reserve an assumed business name that is

10 not in conflict with the provisions of 30-13-202 for a term of 120 days by delivering to the secretary of state, on

11 forms furnished by the secretary of state in accordance with 2-15-401(3), an application for reservation of an

12 assumed business name, including but not limited to the following information:

- 13 (1) the complete assumed business name to be reserved;
- 14 (2) the name and address, including street name and number, if any, of the applicant;
- 15 (3) the date the applicant intends to commence business; and
- 16 (4) a description of business the applicant intends to transact."
- 17

18 **Section 12.** Section 30-13-213, MCA, is amended to read:

19 **"30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the

20 registrant of record of a registered assumed business name wishes to cancel the registration, the registrant

21 shall deliver to the secretary of state, subject to the provisions of 2-15-401(3), a cancellation of registration of

22 an assumed business name form, which must include but not be limited to the following information:

- 23 (a) the complete registered assumed business name to be canceled; and
- 24 (b) the name and business mailing address of the registrant of record.
- 25 (2) If the secretary of state finds the form complies with the provisions of this section, the secretary
- 26 of state shall file it and deliver a letter acknowledging cancellation of the filing to the registrant of record."
- 27

28 **Section 13.** Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who uses a mark may file in the office of the secretary of state, on a form to be furnished by the secretary of state in accordance with 2-15-401(3), an application for registration of that mark setting forth information including but not limited to the following:

- (a) the name and business address of the person applying for registration and:
 - (i) if a corporation, the state of incorporation;
 - (ii) if a limited liability company, the state of organization;
 - (iii) if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;
- (b) the goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with the goods or services and the class in which the goods or services fall;
- (c) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in business; and
- (d) a statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered the mark, either federally or in this state, or has the right to use the mark either in the identical form or in a form that so nearly resembles the mark as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.

(2) The secretary of state may require a statement as to whether an application to register the mark or portions or a composite of the mark has been filed by the applicant or a predecessor in interest in the United States patent and trademark office. If an application has been filed, the applicant shall provide complete information with respect to that filing, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for nonregistration.

(3) The secretary of state may require that a drawing of the mark, complying with requirements that the secretary of state may specify, accompany the application.

(4) The application must be signed and verified by the applicant or a member of the firm or limited

1 liability company or an officer of the corporation or association applying.

2 (5) The application must be accompanied by three specimens showing the mark as actually used.

3 (6) The application for registration must be accompanied by a filing fee as provided for in 30-13-
4 320."

5

6 **Section 14.** Section 30-13-313, MCA, is amended to read:

7 **"30-13-313. Duration and renewal.** (1) Registration of a mark under this part is effective for a term of
8 5 years from the date of registration, and upon application filed within 6 months prior to the expiration of that
9 term, in a manner complying with the requirements of the secretary of state in accordance with 2-15-401(3), the
10 registration may be renewed for another 5 years.

11 (2) The application for renewal of mark registration must be accompanied by a filing fee as
12 provided for in 30-13-320.

13 (3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).

14 ~~(4) Any registration in force on July 1, 2003, continues in full force and effect for the unexpired term of~~
15 ~~the registration and may be renewed by filing an application for renewal with the secretary of state complying~~
16 ~~with the requirements of the secretary of state and paying the renewal fee within 6 months prior to the~~
17 ~~expiration of the registration.~~

18 ~~(5)~~(4) All applications for renewal under this part must include a verified statement that the mark has
19 been and is still in use, a specimen showing actual use of the mark on or in connection with the goods or
20 services, and the following information:

21 (a) the original identification number assigned by the secretary of state;

22 (b) the name subscribed for the mark;

23 (c) the name and business mailing address of the person claiming ownership of the mark;

24 (d) if a corporation, the state of incorporation or, if a partnership, the state in which the partnership
25 is organized and the names of the general partners, as specified by the secretary of state; and

26 (e) the class of goods or services and a description of the goods or services on or in connection
27 with which the mark is used."

28

Section 15. Section 30-13-315, MCA, is amended to read:

"30-13-315. Assignment -- change of name -- other instruments. (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. An assignment must be by written, duly executed instruments and may be recorded, subject to the provisions of 2-15-401(3), with the secretary of state upon the payment of the recording fee payable to the secretary of state.

Upon recording the assignment, the secretary of state shall issue a new certificate in the name of the assignee for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to the subsequent purchase.

(2) Any applicant or registrant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the applicant or registrant with the secretary of state, subject to the provisions of 2-15-401(3), upon the payment of the recording fee. The secretary of state may issue in the name of the assignee a certificate of registration of an assigned application. The secretary of state may issue, in the name of the assignee, a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments that relate to a mark registered or an application pending pursuant to this part, such as licenses, security interests, or mortgages, may be recorded at the discretion of the secretary of state if the instrument is in writing and is duly executed.

(4) An acknowledgment is prima facie evidence of the execution of an assignment or other instrument, and when recorded by the secretary of state, the record is prima facie evidence of execution.

(5) A photocopy of any instrument referred to in subsections (1) through (3) must be accepted for recording if it is certified by any of the parties to the instrument or their successors to be a true and correct copy of the original."

Section 16. Section 30-13-318, MCA, is amended to read:

"30-13-318. Cancellation. The secretary of state shall cancel from the register, in whole or in part:

(1) any registration concerning which the secretary of state receives, subject to the provisions of 2-

- 1 15-401(3), a voluntary request for cancellation from the registrant or the assignee of record;
- 2 (2) each registration granted under this part and not renewed in accordance with the provisions of
- 3 this part;
- 4 (3) any registration concerning which a court of competent jurisdiction finds that:
- 5 (a) the registered mark has been abandoned;
- 6 (b) the registrant is not the owner of the mark;
- 7 (c) the registration was granted improperly;
- 8 (d) the registration was obtained fraudulently;
- 9 (e) the mark is or has become the generic name for the goods or services or a portion of the goods
- 10 or services for which it has been registered;
- 11 (f) the registered mark is so similar to a mark currently registered by another person in the United
- 12 States patent and trademark office prior to the filing date of the application for registration under this part as to
- 13 be likely to cause confusion or mistake or to deceive. However, if the registrant proves that the registrant is the
- 14 owner of a concurrent registration of a mark in the United States patent and trademark office covering an area
- 15 including this state, the registration under this part may not be canceled.
- 16 (4) a registration that is ordered to be canceled by a court of competent jurisdiction on any
- 17 grounds."

18

19 **Section 17.** Section 35-2-114, MCA, is amended to read:

20 **"35-2-114. Definitions.** As used in this chapter, the following definitions apply:

- 21 (1) "Approved by the members" means approved and ratified by the affirmative vote:
- 22 (a) of a majority of the votes represented and voting:
- 23 (i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the
- 24 required quorum;
- 25 (ii) by a written ballot or written consent in conformity with this chapter; or
- 26 (iii) by the affirmative vote, written ballot, or written consent of the majority; and
- 27 (b) that includes the votes of all the members of any class, unit, or grouping that may be required
- 28 by the articles, bylaws, or this chapter for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

(3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications.

(4) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

(5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

(6) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

(7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

(8) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt in a manner authorized by the secretary of state, subject to the provisions of 2-15-401(3).

(10) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(12) "Domestic corporation" means a corporation.

(13) "Effective date of notice" has the meaning provided in 35-2-115(5).

(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(15) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(16) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(17) "External communications" includes any communication with the secretary of state, the attorney general, a state, or the United States.

(18) "File", "filed", or "filing" means filed in the office of the secretary of state.

(19) "Foreign corporation" means a corporation that is organized under a law other than the law of this state, including the laws of a federally recognized Indian tribe, and that would be a nonprofit corporation if formed under the laws of this state.

(20) "Governmental subdivision" includes an authority, county, district, and municipality.

(21) "Includes" denotes a partial definition.

(22) "Individual" includes the estate of an incompetent individual.

(23) "Internal communications" includes any notice, vote, written consent, written ballot, demand, record, member list, corporate record, or any other communication between members, directors, delegates, proxies, third persons under 35-2-232, or the corporate secretary.

(24) "Means" denotes a complete definition.

(25) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

1 (b) A person is not a member by virtue of any of the following:

2 (i) any rights the person has as a delegate;

3 (ii) any rights the person has to designate a director or directors; or

4 (iii) any rights the person has as a director.

5 (26) "Membership" refers to the rights and obligations a member or members have pursuant to a
6 corporation's articles, bylaws, and this chapter.

7 (27) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit
8 corporation.

9 (28) "Notice" means that term as described in 35-2-115.

10 (29) "Person" includes any individual or entity.

11 (30) "Principal office" means the office, in the state or out of the state, that is designated in the
12 annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign
13 corporation is located.

14 (31) "Present" or "presence" includes any form of electronic, virtual, or digital presence authorized
15 by a corporation's articles or bylaws.

16 (32) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

17 (33) "Public benefit corporation" means a domestic corporation designated as a public benefit
18 corporation.

19 (34) "Record" means information that is inscribed on a tangible medium or that is stored in an
20 electronic or other medium and is retrievable in perceivable form.

21 (35) "Record date" means the date established under part 5 on which a corporation determines the
22 identity of its members for the purposes of this chapter.

23 (36) "Religious corporation" means a domestic corporation designated as a religious corporation.

24 (37) "Remote communication" includes communication made by conference telephone call, internet,
25 electronic, remote technology, or similar communication through which all participants in the meeting have the
26 opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters
27 submitted to the members, pose questions, and make comments.

28 (38) "Secretary" means the corporate officer to whom the board of directors has delegated

responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(39) "Sign" or "signed" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(40) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(41) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(42) "Vote" or "voting" includes but is not limited to the giving of consent in the form of a record provided electronically or by written ballot and written consent.

(43) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

(44) "Written" or "in writing" means:

(a) with respect to internal communications, any record in tangible or electronic form or any form allowed under Title 30, chapter 18, part 1; and

(b) with respect to external communications, tangible records or any form authorized by the external party."

Section 18. Section 35-2-119, MCA, is amended to read:

"35-2-119. Filing requirements. All of the following requirements must be met before a document

1 may be filed under this section by the secretary of state:

2 (1) A document that is required or permitted by this chapter to be filed in the office of the secretary
3 of state must satisfy the requirements of this section and of any other section that adds to or varies these
4 requirements.

5 (2) The document must contain the information required by this chapter. The document may
6 contain other information as well.

7 (3) The document must be typewritten or printed unless, subject to the provisions of 2-15-401(3),
8 an electronic form is allowed by the secretary of state.

9 (4) The document must be in the English language. However, a corporate name does not need to
10 be in English if it is written in English letters or Arabic or Roman numerals.

11 (5) (a) Except as provided in subsection (5)(b), the document must be executed:

12 (i) by the presiding officer of the corporation's board of directors, its president, or another of its
13 officers;

14 (ii) if directors have not been selected or the corporation has not been formed, by an incorporator;
15 or

16 (iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by
17 that fiduciary.

18 (b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the
19 corporation's authorized agent.

20 (ii) For the purposes of this subsection (5)(b), "authorized agent" means any individual granted
21 permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining
22 a record of the permission granted to an authorized agent.

23 (6) The person executing the document shall sign the document and state beneath or opposite the
24 signature the person's name and the capacity in which the person signs. The document may but does not need
25 to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment,
26 verification, or proof.

27 (7) The document must be in or on the prescribed form if the secretary of state has prescribed a
28 mandatory form for a document under 35-2-1108.

(8) Except as provided in 33-3-601, the document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 19. Section 35-2-212, MCA, is amended to read:

"35-2-212. Incorporators. (1) One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

(2) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 20. Section 35-2-225, MCA, is amended to read:

"35-2-225. Articles of amendment. (1) A corporation that amends its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

~~(4)~~(a) the name of the corporation;

~~(2)~~(b) the text of each amendment adopted;

~~(3)~~(c) the date of each amendment's adoption;

~~(4)~~(d) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

~~(5)~~(e) if approval by members was required:

~~(a)~~(i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

~~(b)~~(ii) ~~(i)~~(A) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class; and

~~(ii)~~(B) a statement that the number cast for the amendment by each class was sufficient for approval

1 by that class; and

2 ~~(6)(f)~~ if approval of the amendment by some person or persons other than the members, the board,
3 or the incorporators is required pursuant to 35-2-232, a statement that the approval was obtained.

4 (2) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-
5 15-401(3)."

6

7 **Section 21.** Section 35-2-226, MCA, is amended to read:

8 **"35-2-226. Restated articles of incorporation.** (1) A corporation's board of directors may restate its
9 articles of incorporation at any time, with or without approval by members or any other person.

10 (2) The restatement may include one or more amendments to the articles. If the restatement
11 includes an amendment requiring approval by the members or any other person, it must be adopted as
12 provided in 35-2-223.

13 (3) If the restatement includes an amendment requiring approval by members, the board shall
14 submit the restatement to the members for their approval.

15 (4) If the board seeks to have the restatement approved by the members at a membership
16 meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in
17 accordance with 35-2-530. The notice must also state that the purpose or one of the purposes of the meeting is
18 to consider the proposed restatement and must contain or be accompanied by a copy or summary of the
19 restatement that identifies any amendments or other change that the restatement would make in the articles.

20 (5) If the board seeks to have the restatement approved by the members by written ballot or
21 written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of
22 the restatement that identifies any amendments or other change it would make in the articles.

23 (6) A restatement requiring approval by the members must be approved by the same vote as an
24 amendment to articles under 35-2-223.

25 (7) If the restatement includes an amendment that requires approval pursuant to 35-2-232, the
26 board shall submit the restatement for this approval.

27 (8) A corporation that restates its articles shall deliver to the secretary of state, for filing, articles of
28 restatement setting forth the name of the corporation and the text of the restated articles of incorporation,

1 together with a certificate setting forth a statement of whether the restated articles were approved by the board,
2 the members, or any other person and:

3 (a) if the restatement contains an amendment to the articles requiring approval by the members,
4 the information required by 35-2-225;

5 (b) if the restatement contains an amendment to the articles requiring approval by a person whose
6 approval is required pursuant to 35-2-232, a statement that the approval was obtained; and

7 (c) if the restatement has an amendment that does not require member approval, a statement as
8 to who approved the amendment, whether approval was made by the board or any other person.

9 (9) Adopted restated articles of incorporation supersede the original articles of incorporation and
10 all amendments to them.

11 (10) The secretary of state may certify restated articles of incorporation as the articles of
12 incorporation currently in effect without including the certificate information required by subsection (8).

13 (11) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-
14 15-401(3)."

15
16 **Section 22.** Section 35-2-227, MCA, is amended to read:

17 **"35-2-227. Amendment pursuant to judicial reorganization.** (1) A corporation's articles may be
18 amended without board approval, approval by the members, or approval required pursuant to 35-2-232 if
19 necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under
20 federal statute if the articles, after amendment, contain only provisions required or permitted by 35-2-213.

21 (2) The individual or individuals designated by the court shall deliver to the secretary of state, for
22 filing, articles of amendment setting forth:

23 (a) the name of the corporation;

24 (b) the text of each amendment approved by the court;

25 (c) the date of the court's order or decree approving the articles of amendment;

26 (d) the title of the reorganization proceeding in which the order or decree was entered; and

27 (e) a statement that the court had jurisdiction of the proceeding under federal statute.

28 (3) This section does not apply after entry of a final decree in the reorganization proceeding even

though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

(4) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 23. Section 35-2-305, MCA, is amended to read:

"35-2-305. Corporate name. (1) (a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(b) A corporate name may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the corporation is an entity other than a nonprofit corporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A-Subject to the provisions of 2-15-401(3), a corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 24. Section 35-2-306, MCA, is amended to read:

"35-2-306. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

(3) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 25. Section 35-2-307, MCA, is amended to read:

"35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application setting forth:

(a) its corporate name or its corporate name with any change required by 35-2-826, the state, tribe, or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

(6) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 26. Section 35-2-529, MCA, is amended to read:

"35-2-529. Action by written consent. (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least 80% of the voting power. The action must be evidenced by one or more written consents that describe the action taken, be signed by those members representing at least 80% of the voting power, and be delivered to the corporation for inclusion in the

1 minutes or filing with the corporate records.

2 (2) If not otherwise determined under 35-2-528 or 35-2-532, the record date for determining
3 members entitled to take action without a meeting is the date the first member signs the consent under
4 subsection (1).

5 (3) A consent signed under this section has the effect of a meeting vote and may be described as
6 a vote in any document filed with the secretary of state. The document may be filed on a paper form pursuant to
7 2-15-401(3).

8 (4) Written notice of member approval pursuant to this section must be given to all members who
9 have not signed the written consent. If written notice is required, member approval pursuant to this section is
10 effective 10 days after written notice is given."
11

12 **Section 27.** Section 35-2-611, MCA, is amended to read:

13 **"35-2-611. Articles of merger.** (1) After a plan of merger is approved by the board of directors and, if
14 required by 35-2-610, by the members and any other persons, the surviving or acquiring corporation shall
15 deliver to the secretary of state, for filing, articles of merger setting forth:

16 ~~(4)(a)~~ the plan of merger;

17 ~~(2)(b)~~ if approval of members was not required, a statement to that effect and a statement that the
18 plan was approved by a sufficient vote of the board of directors;

19 ~~(3)(c)~~ if approval by members was required:

20 ~~(a)(i)~~ the designation, number of memberships outstanding, number of votes entitled to be cast by
21 each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the
22 plan; and

23 ~~(b)(ii)~~ ~~(i)(A)~~ either the total number of votes cast for and against the plan by each class entitled to
24 vote separately on the plan or the total number of undisputed votes cast for the plan by each class; and

25 ~~(ii)(B)~~ a statement that the number cast for the plan by each class was sufficient for approval by that
26 class;

27 ~~(4)(d)~~ if approval of the plan by some person or persons other than the members or the board is
28 required pursuant to 35-2-610(1)(c), a statement that the approval was obtained.

(2) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 28. Section 35-2-720, MCA, is amended to read:

"35-2-720. Dissolution by incorporators or directors and third persons. (1) A majority of the incorporators or directors of a corporation that does not have members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution. Delivery of a paper form is permissible pursuant to 2-15-401(3).

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation.

(3) In approving dissolution, the incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

(4) In addition to the requirements under this part, a domestic mutual insurer shall comply with the provisions of Title 33, chapter 3, part 6."

Section 29. Section 35-2-723, MCA, is amended to read:

"35-2-723. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

- (a) the name of the corporation;
- (b) the date dissolution was authorized;
- (c) a statement that dissolution was approved by a sufficient vote of the board;
- (d) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (e) if approval by members was required:
 - (i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on

1 dissolution; and

2 (ii) (A) either the total number of votes cast for and against dissolution by each class entitled to
3 vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class; and

4 (B) a statement that the number cast for dissolution by each class was sufficient for approval by
5 that class;

6 (f) if approval of dissolution by some person or persons other than the members, the board, or the
7 incorporators is required pursuant to 35-2-721(1)(c), a statement that the approval was obtained; and

8 (g) if the corporation is a public benefit or religious corporation, that the notice to the attorney
9 general required by 35-2-722(1) has been given.

10 (2) A corporation is dissolved upon the effective date of its articles of dissolution.

11 (3) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-
12 15-401(3)."

13

14 **Section 30.** Section 35-2-724, MCA, is amended to read:

15 **"35-2-724. Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days
16 of its effective date.

17 (2) Revocation of dissolution must be authorized in the same manner as the dissolution was
18 authorized unless that authorization permitted revocation by action of the board of directors alone, in which
19 event the board of directors may revoke the dissolution without action by the members or any other person.

20 (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by
21 delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its
22 articles of dissolution, that set forth:

23 (a) the name of the corporation;

24 (b) the effective date of the dissolution that was revoked;

25 (c) the date that the revocation of dissolution was authorized;

26 (d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to
27 that effect;

28 (e) if the corporation's board of directors revoked a dissolution authorized by the members alone or

in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if member or third person action was required to revoke the dissolution, the information required by 35-2-723(1)(e) and (1)(f).

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may resume carrying on its activities as if dissolution had never occurred.

(6) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 31. Section 35-2-822, MCA, is amended to read:

"35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

~~(1)~~(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

~~(2)~~(b) the name of the state, tribe, or country under whose law it is incorporated;

~~(3)~~(c) the date of incorporation and period of duration;

~~(4)~~(d) the business mailing address of its principal office;

~~(5)~~(e) the information required by 35-7-105(1);

~~(6)~~(f) the names and business mailing addresses of its current directors and officers;

~~(7)~~(g) whether the foreign corporation has members;

~~(8)~~(h) whether the foreign corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation;

~~(9)~~(i) the purpose or purposes of the foreign corporation that it proposes to pursue in the transaction of business in this state; and

1 ~~(10)(j)~~ a statement that the foreign corporation has complied with the organizational laws in the
2 jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

3 (2) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-
4 15-401(3)."

5

6 **Section 32.** Section 35-2-826, MCA, is amended to read:

7 **"35-2-826. Corporate name of foreign corporation.** (1) If the corporate name of a foreign
8 corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a
9 certificate of authority to transact business in this state, may use a fictitious name to transact business in this
10 state if:

11 (a) its real name is unavailable; and

12 (b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors,
13 certified by its secretary, adopting the fictitious name.

14 (2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious
15 name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

16 (a) the corporate name of a nonprofit or business corporation incorporated or authorized to
17 transact business in this state;

18 (b) a corporate name reserved or registered under 35-2-306, 35-2-307, 35-14-402, or 35-14-403;

19 (c) the fictitious name of another foreign business or nonprofit corporation authorized to transact
20 business in this state;

21 (d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a
22 period of 120 days after the effective date of dissolution; and

23 (e) any assumed business name, limited partnership name, limited liability company name,
24 trademark, or service mark registered or reserved with the secretary of state.

25 (3) A foreign corporation may apply to the secretary of state for authorization to use in this state
26 the name of another corporation, incorporated or authorized to transact business in this state, that is not
27 distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall
28 authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state, subject to the provisions of 2-15-401(3), to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 33. Section 35-2-831, MCA, is amended to read:

"35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state, tribe, or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and

1 appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action
2 arising during the time it was authorized to do business in this state;

3 (d) a mailing address to which the secretary of state may mail a copy of any process served on the
4 secretary of state under subsection (2)(c); and

5 (e) a commitment to notify the secretary of state, in the future, of any change in the mailing
6 address.

7 (3) Delivery of a paper form to meet the requirements of this section is permissible pursuant to 2-
8 15-401(3)."

9
10 **Section 34.** Section 35-2-904, MCA, is amended to read:

11 **"35-2-904. Annual report for secretary of state.** (1) Each domestic corporation and each foreign
12 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an
13 annual report on a form prescribed and furnished by the secretary of state, subject to the provisions of 2-15-
14 401(3), that sets forth:

15 (a) the name of the corporation and the jurisdiction under whose law it is incorporated;

16 (b) the information required by 35-7-105(1);

17 (c) the business mailing address of its principal office, wherever located;

18 (d) the names and business mailing addresses of its directors and principal officers;

19 (e) a brief description of the nature of its activities; and

20 (f) whether or not it has members.

21 (2) The information in the annual report must be current on the date the annual report is executed
22 on behalf of the corporation.

23 (3) The first annual report must be delivered to the secretary of state between January 1 and April
24 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign
25 corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary
26 of state between January 1 and April 15.

27 (4) If an annual report does not contain the information required by this section, the secretary of
28 state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for

correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 35. Section 35-2-1108, MCA, is amended to read:

"35-2-1108. Forms. (1) ~~The Subject to the provisions of 2-15-401(3), the~~ secretary of state may by rule prescribe and furnish on request forms or computer formats for:

- (a) an application for a certificate of existence;
- (b) a foreign corporation's application for a certificate of authority to transact business in this state;
- (c) a foreign corporation's application for a certificate of withdrawal;
- (d) the annual report; and
- (e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

(3) ~~The Subject to the provisions of 2-15-401(3), the~~ secretary of state may by rule prescribe and furnish on request forms or computer formats for other documents required or permitted to be filed by this chapter, but their use is not mandatory."

Section 36. Section 35-2-1112, MCA, is amended to read:

"35-2-1112. Certificate of existence. (1) ~~A Subject to the provisions of 2-15-401(3), a~~ person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state; and

- 1 (ii) nonpayment affects the good standing of the domestic or foreign corporation;
- 2 (d) that its most recent annual report required by 35-2-904 has been delivered to the secretary of
- 3 state;
- 4 (e) that articles of dissolution have not been filed; and
- 5 (f) other facts of record in the office of the secretary of state that may be requested by the
- 6 applicant.
- 7 (3) Subject to any qualification stated in the certificate, a certificate of existence issued by the
- 8 secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good
- 9 standing in this state."

10

11 **Section 37.** Section 35-3-203, MCA, is amended to read:

12 **"35-3-203. Effect of issuance of certificate of incorporation.** (1) Upon filing the articles of

13 incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief

14 priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a

15 certificate of incorporation. Articles of incorporation may be filed in paper form pursuant to 2-15-401(3).

16 (2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of

17 incorporation shall be conclusive evidence that all conditions precedent required to be performed by the

18 incorporator have been complied with and that the corporation has been incorporated under this chapter,

19 except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary

20 dissolution of the corporation."

21

22 **Section 38.** Section 35-3-207, MCA, is amended to read:

23 **"35-3-207. Succession.** (1) In the event of the death or resignation from office of any bishop, chief

24 priest, or presiding elder or of that individual's transfer or removal from office by the person or body having the

25 authority to remove that individual, the individual's successor in office succeeds to the powers, rights, and

26 obligations of the office and becomes vested with the title to the property with like power and authority over the

27 property and subject to all the legal liabilities and obligations with reference to the property.

28 (2) Succession is effected when the successor files in the office of the secretary of state the

1 original or a copy or translation of the successor's commission, certificate, or letters of appointment as bishop,
2 chief priest, or presiding elder, duly attested, and the successor's affidavit that the document is a true copy or
3 translation is considered sufficient attestation of the document. Filing of a paper copy is permissible pursuant to
4 2-15-401(3)."

5
6 **Section 39.** Section 35-3-209, MCA, is amended to read:

7 **"35-3-209. Annual report.** (1) Each corporation, subject to the provisions of this chapter, shall file
8 within the time and in the manner prescribed by the Montana Nonprofit Corporation Act an annual report on
9 forms or in a computerized format prescribed by the secretary of state, subject to the provisions of 2-15-401(3),
10 setting forth:

11 (a) the name of the corporation and the name of the present incumbent chief corporate officer;
12 (b) the business mailing address of the principal office of the corporation, wherever located, and
13 the information specified by 35-7-105(1);
14 (c) the names and business mailing addresses of the present members of the board of advisers or
15 consultants of the corporation.

16 (2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting
17 under a power of attorney filed with the secretary of state by the chief corporate officer."
18

19 **Section 40.** Section 35-4-110, MCA, is amended to read:

20 **"35-4-110. Application to existing corporations.** (1) This chapter applies to each professional
21 corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or
22 purposes to comply with this chapter, it shall deliver one duly executed original and one copy of articles of
23 amendment or restated articles of incorporation containing such amendments to the secretary of state within 90
24 days after October 1, 1983.

25 (2) Any corporation that is not a professional corporation may become subject to this chapter by
26 delivering to the secretary of state one duly executed original and one copy of articles of amendment or
27 restated articles of incorporation stating that the corporation elects to become subject to this chapter and
28 containing such amendments of its corporate name or purposes as are required to comply with this chapter.

1 (3) Delivery of paper forms to meet the requirements of this section is permissible pursuant to 2-
2 15-401(3)."

3

4 **Section 41.** Section 35-4-206, MCA, is amended to read:

5 **"35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

6 (1) must contain the words "professional corporation" or the abbreviation "P.C." and may not
7 contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."
8 unless the name of a foreign corporation contains the words "professional services" or "P.S.";

9 (2) may not contain any word or phrase that indicates or implies that the corporation is organized
10 for any purpose other than the purposes contained in its articles of incorporation;

11 (3) must be distinguishable on the record from any assumed business name, limited partnership
12 name, limited liability company name, trademark, or service mark registered or reserved with the secretary of
13 state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation
14 authorized to transact business in this state, a name the exclusive right to which is reserved in the manner
15 provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration
16 of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

17 (a) the similarity results from the use in the corporate name of personal names of shareholders or
18 former shareholders or of natural persons who were associated with a predecessor entity; or

19 (b) the corporation files, subject to the provisions of 2-15-401(3), with the secretary of state either:

20 (i) the written consent of the other corporation or holder of a reserved or registered name to use a
21 name that is not distinguishable on the record from the other name; or

22 (ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right
23 of the corporation to the use of the name in this state.

24 (4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional
25 service described in the articles of incorporation of the corporation."

26

27 **Section 42.** Section 35-4-209, MCA, is amended to read:

28 **"35-4-209. Annual reports and statements.** (1) The annual report of each domestic professional

corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of this chapter and rules promulgated under this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

(3) Filing of a paper form is permissible to fulfill the requirements of this section pursuant to 2-15-401(3)."

Section 43. Section 35-4-411, MCA, is amended to read:

"35-4-411. Admission of foreign professional corporations -- application -- revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

- (a) the name of the corporation meets the requirements of 35-4-206;
- (b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and
- (c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) A foreign professional corporation is not required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement

1 of purposes of the corporation.

2 (4) The certificate of authority may be revoked by the secretary of state if the corporation fails to
3 comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time
4 to time, the names of all foreign professional corporations that have given cause for revocation, together with
5 the facts pertinent to the cause, and shall concurrently mail to each corporation through its registered agent a
6 notice that the certification has been made. A certificate of authority of a foreign professional corporation may
7 not be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the
8 noncompliance during the 60 days.

9 (5) Submission of an application or certification on a paper form is permissible pursuant to 2-15-
10 401(3)."

11

12 **Section 44.** Section 35-5-201, MCA, is amended to read:

13 **"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service**
14 **of process.** (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

15 (a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was
16 created and all amendments or a true copy certified by a trustee of the trust before an official authorized to
17 administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed
18 copy is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

19 (b) a verified list of the names, residences, and post-office addresses of its trustees;

20 (c) an affidavit setting forth its assumed business name, if any.

21 (2) A foreign business trust shall file a verified application in the office of the secretary of state as
22 provided in the case of foreign corporations under 35-14-1503 and shall file a copy of its articles, declaration of
23 trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county
24 clerk of the county where its principal office or place of business in this state will be located. The foreign
25 business trust shall also file, at the same time and in the same office, a certificate certifying that it has
26 consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has
27 consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that
28 service of process may be made upon some person, a citizen of this state whose principal place of business is

designated in the certificate. Service of process, when made upon the agent, is valid service on the business trust.

(3) Filing of a paper form is permissible to fulfill the requirements of this section pursuant to 2-15-401(3)."

Section 45. Section 35-5-203, MCA, is amended to read:

"35-5-203. Amendment to creating instrument -- filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana, subject to the provisions of 2-15-401(3), and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located."

Section 46. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and
(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;
(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-2-726 and 35-2-727;
(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and
(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

- 1 (3) The corporation shall submit with its application for reinstatement:
- 2 (a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15
- 3 have been paid;
- 4 (b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-
- 5 405; and
- 6 (c) all annual reports not yet filed with the secretary of state.
- 7 (4) When all requirements are met and the secretary of state reinstates the corporation to its
- 8 former rights, the secretary of state shall:
- 9 (a) conform and file in the secretary of state's office reports, statements, and other instruments
- 10 submitted for reinstatement;
- 11 (b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement
- 12 authorizing it to transact business; and
- 13 (c) upon demand, issue to the corporation one or more certified copies of the certificate of
- 14 reinstatement.
- 15 (5) The secretary of state may not order a reinstatement if 5 years have elapsed since the
- 16 dissolution.
- 17 (6) Submission of an application or certification on a paper form is permissible pursuant to 2-15-
- 18 401(3)."
- 19

20 **Section 47.** Section 35-6-203, MCA, is amended to read:

21 **"35-6-203. Acquisition of new name by corporation upon reinstatement.** In all cases ~~where in~~

22 which a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been

23 dissolved under other law and the corporate name of that corporation has been legally acquired by another

24 corporation prior to the application for reinstatement of ~~such the~~ dissolved corporation, ~~such the~~ dissolved

25 corporation shall in its application for reinstatement submit to the secretary of state, subject to the provisions of

26 2-15-401(3), some other name under which it desires its corporate existence to be reinstated. If that name is

27 sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to ~~such the~~

28 reinstated corporation a certificate of reinstatement under the new name."

1

2 **Section 48.** Section 35-7-106, MCA, is amended to read:

3 **"35-7-106. Listing of commercial registered agent.** (1) An individual or a domestic or foreign entity
4 may become listed as a commercial registered agent by filing with the secretary of state, subject to the
5 provisions of 2-15-401(3), a commercial registered agent listing statement signed by or on behalf of the person
6 that states:

7 (a) the name of the individual or the name, type, and jurisdiction of organization of the entity;
8 (b) that the person is in the business of serving as a commercial registered agent in this state; and
9 (c) the address of a place of business of the person in this state to which service of process and
10 other notice and documents being served on or sent to entities represented by it may be delivered.

11 (2) If the name of a person filing a commercial registered agent listing statement is not
12 distinguishable on the records of the secretary of state from the name of another commercial registered agent
13 listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its
14 statement and when it does business in this state as a commercial registered agent.

15 (3) A commercial registered agent listing statement takes effect on filing.

16 (4) The secretary of state shall note the filing of the commercial registered agent listing statement
17 in the index of filings maintained by the secretary of state for each entity represented by the registered agent at
18 the time of the filing. The statement has the effect of deleting the address of the registered agent from the
19 registered agent filing of each of those entities."

20

21 **Section 49.** Section 35-7-107, MCA, is amended to read:

22 **"35-7-107. Termination of listing of commercial registered agent.** (1) A commercial registered
23 agent may terminate its listing as a commercial registered agent by filing with the secretary of state, subject to
24 the provisions of 2-15-401(3), a commercial registered agent termination statement signed by or on behalf of
25 the agent that states:

26 (a) the name of the agent as currently listed under 35-7-106; and

27 (b) that the agent is no longer in the business of serving as a commercial registered agent in this
28 state.

(2) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(3) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(4) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in 35-7-113. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity."

Section 50. Section 35-7-108, MCA, is amended to read:

"35-7-108. Change of registered agent by entity. (1) A represented entity may change the information currently on file under 35-7-105(1) by filing with the secretary of state, subject to the provisions of 2-15-401(3), a statement of change signed on behalf of the entity that states:

(a) the name of the entity; and

(b) the information that is to be in effect as a result of the filing of the statement of change.

(2) The interest holders or governors of a domestic entity need not approve the filing of:

(a) a statement of change under this section; or

(b) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(3) The appointment of a registered agent pursuant to subsection (1) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(4) A statement of change filed under this section takes effect on filing.

(5) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under 35-7-105(1) by amending its most recent registered agent filing in the manner provided by the laws of this state other than this chapter for amending that filing."

Section 51. Section 35-7-109, MCA, is amended to read:

"35-7-109. Change of name or address by noncommercial registered agent. (1) If a

noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to 35-7-105(1), the agent shall file with the secretary of state, subject to the provisions of 2-15-401(3), with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent that states:

- (a) the name of the entity;
- (b) the name and address of the agent as currently in effect with respect to the entity;
- (c) if the name of the agent has changed, its new name; and
- (d) if the address of the agent has changed, the new address.

(2) A statement of change filed under this section takes effect on filing.

(3) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing."

Section 52. Section 35-7-110, MCA, is amended to read:

"35-7-110. Change of name, address, or type of organization by commercial registered agent.

(1) If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under 35-7-106(1), or its type or jurisdiction of organization, the agent shall file with the secretary of state, subject to the provisions of 2-15-401(3), a statement of change signed by or on behalf of the agent that states:

- (a) the name of the agent as currently listed under 35-7-106(1);
- (b) if the name of the agent has changed, its new name;
- (c) if the address of the agent has changed, the new address; and
- (d) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(2) The filing of a statement of change under subsection (1) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(3) A statement of change filed under this section takes effect on filing.

(4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(5) If a commercial registered agent changes its address without filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under 35-7-106. A cancellation under this subsection has the same effect as a termination under 35-7-107. Promptly after canceling the listing of an agent, the secretary of state shall deliver notice on:

(a) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in 35-7-113; and

(b) the agent, stating that the listing of the agent has been canceled under this section.

(6) The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of filing."

Section 53. Section 35-7-111, MCA, is amended to read:

"35-7-111. Resignation of registered agent. (1) A registered agent may resign at any time with respect to a represented entity by filing with the secretary of state, subject to the provisions of 2-15-401(3), a statement of resignation signed by or on behalf of the agent that states:

(a) the name of the entity;

(b) the name of the agent;

(c) that the agent resigns from serving as agent for service of process for the entity; and

(d) the name and address of the person to which the agent will send the notice required by subsection (3).

(2) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(3) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(5) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing."

Section 54. Section 35-7-112, MCA, is amended to read:

"35-7-112. Appointment of agent by nonfiling or nonqualified foreign entity. (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state, subject to the provisions of 2-15-401(3), a statement appointing an agent for service of process signed on behalf of the entity that states:

(a) the name, type, and jurisdiction of organization of the entity; and

(b) the information required by 35-7-105(1).

(2) A statement appointing an agent for service of process takes effect on filing.

(3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(4) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(5) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, subject to the provisions of 2-15-401(3), which takes effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process that has not been canceled earlier is effective for a period of 5 years after the date of filing.

(6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity."

1

2 **Section 55.** Section 35-8-205, MCA, is amended to read:

3 **"35-8-205. Filing with secretary of state.** (1) The articles of organization or any other document
4 required to be filed pursuant to this chapter must be delivered to the secretary of state. Delivery of a paper form
5 for any of the documents is permissible pursuant to 2-15-401(3). If the secretary of state determines that the
6 documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the
7 secretary of state shall:

8 (a) endorse on the signed document the word "filed" and the date and time of accepting the
9 document for filing;

10 (b) retain the signed document in the secretary of state's files; and

11 (c) send a certification letter to the person who filed the document or to the person's
12 representative.

13 (2) If the secretary of state is unable to make the determination required for filing by subsection (1)
14 at the time any documents are delivered for filing, the documents are considered to have been filed at the time
15 of delivery if the secretary of state subsequently determines that the documents as delivered conform to the
16 filing provisions of 35-8-201 through 35-8-211.

17 (3) All documents filed with the secretary of state must reflect the name of the limited liability
18 company and all series of members within the limited liability company if the limited liability company has one or
19 more series of members."
20

21 **Section 56.** Section 35-8-912, MCA, is amended to read:

22 **"35-8-912. Reinstatement following administrative dissolution.** (1) A limited liability company
23 administratively dissolved under the provisions of 35-8-209 may, subject to the provisions of 2-15-401(3), apply
24 to the secretary of state for reinstatement within 5 years after the effective date of dissolution to restore its right
25 to carry on business in this state and to exercise all its privileges and immunities. A limited liability company
26 applying for reinstatement shall submit to the secretary of state an official application, executed by a person
27 who was a member or manager at the time of dissolution, setting forth:

28 (a) the name and business mailing address of the limited liability company;

- 1 (b) a statement that the assets of the limited liability company have not been liquidated;
2 (c) a statement that a majority of its members have authorized the application for reinstatement;
3 and
4 (d) if its name has been legally acquired by another entity prior to its application for reinstatement,
5 the name under which the limited liability company desires to be reinstated.
- 6 (2) The limited liability company shall submit with its application for reinstatement:
7 (a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15
8 have been paid unless a limited liability company has only one member and has not elected to be taxed as a
9 corporation; and
10 (b) all annual reports not yet filed with the secretary of state.
11 (3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates
12 the limited liability company, the secretary of state shall:
13 (a) conform and file in the office of the secretary of state reports, statements, and other
14 instruments submitted for reinstatement;
15 (b) immediately issue and deliver to the reinstated limited liability company a certificate of
16 reinstatement authorizing it to transact business; and
17 (c) upon demand and receipt of the specified fee, issue to the limited liability company one or more
18 certified copies of the certificate of reinstatement.
19 (4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of
20 dissolution.
21 (5) A restoration of limited liability company rights pursuant to this section relates back to the date
22 the limited liability company was administratively dissolved, and the limited liability company is considered to
23 have been an existing legal entity from the date of its original organization."
24

25 **Section 57.** Section 35-10-111, MCA, is amended to read:

26 **"35-10-111. Execution, filing, and recording of statements.** (1) A statement may be filed in the
27 office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be
28 filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to

1 partnership property located in or transactions that occur in this state.

2 (2) A certified copy of a statement that has been filed in the office of the secretary of state and
3 recorded in the office for recording transfers of real property has the effect provided for recorded statements in
4 this chapter. A recorded statement that is not a certified copy of a statement in the office of the secretary of
5 state does not have the effect provided for recorded statements in this chapter.

6 (3) A statement filed by a partnership must be executed by at least two partners. Other statements
7 must be executed by a partner or other person authorized by this chapter. The statement must be in the English
8 language. An individual who executes a statement as or on behalf of a partner or other person named as a
9 partner in a statement shall state beneath or opposite the person's signature the person's name and the
10 capacity in which the person signs. The execution of any document required to be filed with the secretary of
11 state under this chapter constitutes an affirmation under penalties of false swearing by each person executing
12 the document that the facts stated are true.

13 (4) A person authorized by this chapter to file a statement may amend or cancel the statement by
14 filing an amendment or cancellation that names the partnership, identifies the statement, and states the
15 substance of the amendment or cancellation.

16 (5) A person who files a statement pursuant to this section shall promptly send a copy of the
17 statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send
18 a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a
19 person not a partner.

20 (6) The secretary of state shall establish by rule fees for filing statements, issuing certificates,
21 copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated
22 information. The fees must be reasonably related to the costs of processing the statements and providing the
23 services. The secretary of state shall maintain records sufficient to support the fees established under this
24 section. ~~The~~ Subject to the provisions of 2-15-401(3), the secretary of state may adopt rules necessary to
25 perform any duty required of the secretary of state by this chapter."
26

27 **Section 58.** Section 35-10-113, MCA, is amended to read:

28 **"35-10-113. Filing with secretary of state.** (1) A signed statement filed pursuant to this chapter must

be delivered to the secretary of state. Delivery of a paper form is permissible pursuant to 2-15-401(3). If the secretary of state determines that the statement conforms to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

- (a) endorse on the signed statement the word "filed" and the date and time of acceptance for filing;
- (b) retain the signed statement in the secretary of state's files; and
- (c) send a certification letter to the person who filed the statement or the person's representative.

(2) The Subject to the provisions of 2-15-401(3), the secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires it, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2."

Section 59. Section 35-10-701, MCA, is amended to read:

"35-10-701. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration on a form furnished by the secretary of state that indicates an intention to register as a limited liability partnership under this section.

(2) The application for registration of a limited liability partnership must be executed by two or more partners authorized to execute the application and registration and must contain the following information:

- (a) the name and business mailing address of the limited liability partnership;
- (b) a description of business transacted by the limited liability partnership; and
- (c) the name and business mailing address of each of the partners.

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with this section.

(4) A partnership's registration under this section is effective when the secretary of state files the partnership's application for registration under subsection (1) and remains in effect until it is canceled by the secretary of state.

(5) The fact that an application for registration of a limited liability partnership under this section or any renewals of that partnership are on file with the office of the secretary of state is notice that the partnership

1 is a limited liability partnership and is notice of all other facts set forth in the application.

2 (6) ~~The~~ Subject to the provisions of 2-15-401(3), the secretary of state shall provide necessary
3 forms for the registration of a limited liability partnership under subsections (1) and (2) or any renewals of
4 registration."

5

6 **Section 60.** Section 35-10-715, MCA, is amended to read:

7 **"35-10-715. Term and renewal of limited liability partnership registration.** (1) Registration of a
8 limited liability partnership is effective for a term of 5 years from the date of registration. Upon application for
9 renewal of registration on forms furnished by the secretary of state in accordance with 2-15-401(3), the
10 registration may be renewed for another 5-year term.

11 (2) Not less than 90 days before the expiration date of the registration of a limited liability
12 partnership, the secretary of state shall notify the limited liability partnership of the pending expiration by mailing
13 a notice to the business mailing address of the limited liability partnership.

14 (3) If a limited liability partnership fails to file an application for renewal with the secretary of state
15 within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the
16 registration and the partnership is no longer a limited liability partnership."

17

18 **Section 61.** Section 35-10-718, MCA, is amended to read:

19 **"35-10-718. Filing amendment to registration of limited liability partnership -- issuance of**
20 **certificate.** (1) An application for amended registration of a limited liability partnership must be filed with the
21 secretary of state, subject to the provisions of 2-15-401(3), and must include:

22 (a) the complete limited liability partnership name prior to adoption of the amendment;

23 (b) the complete new limited liability partnership name, if applicable;

24 (c) the business mailing address of the limited liability partnership;

25 (d) if the name of any partner to a limited liability partnership is to be changed, the new name of
26 the partner;

27 (e) if a partner withdraws or dies, a statement that the person has withdrawn or died;

28 (f) a statement that the amended registration of limited liability partnership supersedes the original

1 registration and all amendments to the original registration; and

2 (g) all other information determined by the secretary of state to be necessary to support an
3 application.

4 (2) If the secretary of state finds that the application for amended registration of a limited liability
5 partnership complies with this part and that all applicable fees have been paid, the secretary of state shall:

6 (a) endorse on the application for amendment the word "filed" and the date on which the
7 application for amendment was filed;

8 (b) file the original application for amendment in the secretary of state's office; and

9 (c) issue to the limited liability partnership a certificate of amendment.

10 (3) If the limited liability partnership fails to comply with the requirements of this section, the
11 secretary of state shall cancel the registration."

12

13 **Section 62.** Section 35-10-719, MCA, is amended to read:

14 **"35-10-719. Reservation of proposed limited liability partnership name.** (1) An authorized person
15 who has not commenced business but intends to commence business may reserve a limited liability partnership
16 name for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state,
17 subject to the provisions of 2-15-401(3) and 35-10-720, an application for reservation of a limited liability
18 partnership name.

19 (2) The proposed limited liability partnership name may not be the same as or indistinguishable on
20 the record from an assumed business name already registered or from any corporate name, limited partnership
21 name, limited liability company name, limited liability partnership name, trademark, or service mark registered
22 or reserved with the secretary of state.

23 (3) An applicant for a proposed limited liability partnership name may not use a business name
24 identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other
25 than the type of entity that it is."

26

27 **Section 63.** Section 35-10-721, MCA, is amended to read:

28 **"35-10-721. Voluntary cancellation of registration of limited liability partnership.** (1) When a

1 limited liability partnership wishes to cancel its registration, two or more partners shall deliver to the secretary of
2 state a cancellation of registration of a limited liability partnership form, which must include but is not limited to
3 the following information:

- 4 (a) the complete name of the registered limited liability partnership to be canceled;
- 5 (b) the business mailing address of the limited liability partnership; and
- 6 (c) the names and business mailing addresses of the partners.

7 (2) If the secretary of state finds the form complies with the provisions of this section, the secretary
8 of state shall file it and deliver a letter acknowledging cancellation of the registration to the limited liability
9 partnership.

10 (3) Submission of a paper form to meet the requirements of this section is permissible pursuant to
11 2-15-401(3)."

12

13 **Section 64.** Section 35-10-722, MCA, is amended to read:

14 **"35-10-722. Execution constituting affirmation -- penalty -- warning.** (1) The execution of any
15 document required to be filed with the secretary of state under this part constitutes an affirmation, under the
16 penalties for false swearing, by each person executing the document that the statements in the document are
17 true.

18 (2) The secretary of state shall provide for the printing of a warning to this effect on each form
19 prescribed by the secretary of state, in accordance with 2-15-401(3), under this part."

20

21 **Section 65.** Section 35-12-614, MCA, is amended to read:

22 **"35-12-614. Delivery to and filing of records by secretary of state -- effective time and date.** (1)

23 A record authorized or required to be delivered to the secretary of state for filing under this chapter must be
24 captioned to describe the record's purpose, be in a medium permitted by the secretary of state, in accordance
25 with 2-15-401(3), and be delivered to the secretary of state. Unless the secretary of state determines that a
26 record does not comply with the filing requirements of this chapter, if all filing fees have been paid, the
27 secretary of state shall file the record and upon request and payment of a fee:

28 (a) for a statement of dissociation, send:

1 (i) a copy of the filed statement to the person that the statement indicates has dissociated as a
2 general partner; and

3 (ii) a copy of the filed statement to the limited partnership;

4 (b) for a statement of withdrawal, send:

5 (i) a copy of the filed statement to the person on whose behalf the record was filed; and

6 (ii) if the statement refers to an existing limited partnership, a copy of the filed statement to the
7 limited partnership; and

8 (c) for all other records, send a copy of the filed record to the person on whose behalf the record
9 was filed.

10 (2) Upon request and payment of a fee, the secretary of state shall send to the requester a
11 certified copy of the requested record.

12 (3) Except as otherwise provided in 35-7-111 and 35-12-616, a record delivered to the secretary of
13 state for filing under this chapter may specify an effective time and a delayed effective date. Except as
14 otherwise provided in this chapter, a record filed by the secretary of state is effective:

15 (a) if the record does not specify an effective time and does not specify a delayed effective date,
16 on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date
17 and time on the record;

18 (b) if the record specifies an effective time but not a delayed effective date, on the date the record
19 is filed at the time specified in the record;

20 (c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the
21 earlier of:

22 (i) the specified date; or

23 (ii) the 90th day after the record is filed; or

24 (d) if the record specifies an effective time and a delayed effective date, at the specified time on
25 the earlier of:

26 (i) the specified date; or

27 (ii) the 90th day after the record is filed."

28

Section 66. Section 35-14-120, MCA, is amended to read:

"35-14-120. Requirements for documents -- extrinsic facts. (1) A document must satisfy the

requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) This chapter must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this chapter and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under 35-14-121(1), the document must be in or on the prescribed form.

(9) ~~The Subject to the provisions of 2-15-401(3), the document must be delivered to the office of the secretary of state for filing by electronic transmission. The secretary of state may authorize exceptions to the requirement of filing documents by electronic transmission.~~

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee and any franchise tax, license fee, or penalty required by this chapter or other law to be paid at the time of

delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of this chapter except part 15 or 35-14-1621; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed document;

(ii) the registered office of any entity required in a filed document;

(iii) the registered agent of any entity required in a filed document;

(iv) the number of authorized shares and designation of each class or series of shares;

- 1 (v) the effective date of a filed document; and
- 2 (vi) any required statement in a filed document of the date on which the underlying transaction was
- 3 approved or the manner in which that approval was given.

4 (e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed

5 document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a

6 document that is a matter of public record and the affected shareholders have not received notice of the fact

7 from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed

8 document setting forth the fact promptly after the time when the fact referred to is first ascertainable or

9 subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by

10 the authorization of the original filed document to which they relate and may be filed by the corporation without

11 further action by the board of directors or the shareholders."

12

13 **Section 67.** Section 35-14-121, MCA, is amended to read:

14 **"35-14-121. Forms.** (1) (a) The secretary of state may prescribe and furnish on request forms for:

- 15 (i) an application for a certificate of existence or certificate of registration;
- 16 (ii) a foreign corporation's registration statement;
- 17 (iii) a foreign corporation's statement of withdrawal;
- 18 (iv) a foreign corporation's transfer of registration statement; and
- 19 (v) the annual report.

20 (b) If the secretary of state requires, use of these forms is mandatory.

21 (2) The secretary of state may prescribe and furnish on request forms for other documents

22 required or permitted to be filed by this chapter, but their use is not mandatory.

23 (3) Submission of paper forms is permissible pursuant to 2-15-401(3)."

24

25 **Section 68.** Section 35-14-124, MCA, is amended to read:

26 **"35-14-124. Correcting filed document.** (1) A document filed by the secretary of state pursuant to

27 this chapter may be corrected if:

- 28 (a) the document contains an inaccuracy;

1 (b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

2 (c) the electronic transmission was defective.

3 (2) A document is corrected:

4 (a) by preparing articles of correction that:

5 (i) describe the document, including its filing date, or attach a copy of it to the articles of
6 correction;

7 (ii) specify the inaccuracy or defect to be corrected; and

8 (iii) correct the inaccuracy or defect; and

9 (b) by delivering the articles of correction to the secretary of state for filing. Delivery of a paper
10 form is permissible pursuant to 2-15-401(3).

11 (3) Articles of correction are effective on the effective date of the document they correct except as
12 to persons relying on the uncorrected document and adversely affected by the correction. As to those persons,
13 articles of correction are effective when filed."

14

15 **Section 69.** Section 35-14-130, MCA, is amended to read:

16 **"35-14-130. Powers.** (1) The secretary of state has the power reasonably necessary to perform the
17 duties required of the secretary of state by this chapter.

18 (2) ~~The Subject to the provisions of 2-15-401(3), the~~ secretary of state may adopt rules to perform
19 the duties required of the secretary of state under this part, including establishing necessary fees."

20

21 **Section 70.** Section 35-14-141, MCA, is amended to read:

22 **"35-14-141. Notices and other communications.** (1) A notice under this chapter must be in writing
23 unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the
24 recipient, words in a notice or other communication under this chapter must be in English.

25 (2) A notice or other communication may be given by any method of delivery, except that
26 electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a
27 notice or other communication may be given by means of a broad nonexclusionary distribution to the public,
28 which may include:

- 1 (a) a newspaper of general circulation in the area where published;
- 2 (b) radio, television, or other form of public broadcast communication; or
- 3 (c) other methods of distribution that the corporation has previously identified to its shareholders.

4 (3) A notice or other communication to a domestic corporation or to a foreign corporation

5 registered to do business in this state may be delivered to the corporation's registered agent at its registered

6 office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the

7 case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

8 (4) A notice or other communications may be delivered by electronic transmission if consented to

9 by the recipient or if authorized by subsection (10). A corporation that files documents with the office of the

10 secretary of state under this chapter is considered to have given its ~~irrevocable~~ consent to delivery of notices or

11 other communications by the office of the secretary of state to the corporation by electronic transmission unless

12 otherwise requested pursuant to 2-15-401(3).

13 (5) Any consent under subsection (4) may be revoked by the person who consented by written or

14 electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

15 (a) the corporation is unable to deliver two consecutive electronic transmissions given by the

16 corporation in accordance with the consent; and

17 (b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent

18 or other person responsible for the giving of notice or other communications. However, the inadvertent failure to

19 treat the inability as a revocation does not invalidate any meeting or other action.

20 (6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is

21 received when:

22 (a) it enters an information processing system that the recipient has designated or uses for the

23 purposes of receiving electronic transmissions or information of the type sent and from which the recipient is

24 able to retrieve the electronic transmission; and

25 (b) it is in a form capable of being processed by that system.

26 (7) Receipt of an electronic acknowledgment from an information processing system described in

27 subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that

28 the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under 35-14-1601(4);

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of

1 meetings of directors by electronic transmission.

2 (12) In the event that any provisions of this chapter are determined to modify, limit, or supersede the
3 federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of
4 this chapter control to the maximum extent permitted by section 102(a)(2) of that federal act.

5 (13) (a) Whenever notice would otherwise be required to be given under any provision of this
6 chapter to a shareholder, the notice need not be given if:

7 (i) notices to shareholders of two consecutive annual meetings, and all notices of meetings during
8 the period between the two consecutive annual meetings, have been sent, other than by electronic
9 transmission, to the shareholder at the shareholder's address as shown on the records of the corporation and
10 have been returned undeliverable or could not be delivered; or

11 (ii) all, but not less than two, distributions to shareholders during a 12-month period, or two
12 consecutive distributions to shareholders during a period of more than 12 months, have been sent to the
13 shareholder at the shareholder's address as shown on the records of the corporation and have been returned
14 undeliverable or could not be delivered.

15 (b) If any shareholder to which this subsection (13) applies delivers to the corporation a written
16 notice setting forth the shareholder's then-current address, the requirement that notice be given to the
17 shareholder must be reinstated."

18

19 **Section 71.** Section 35-14-1621, MCA, is amended to read:

20 **"35-14-1621. Annual report for secretary of state.** (1) Each domestic corporation shall deliver to the
21 secretary of state for filing an annual report that sets forth:

22 (a) the name of the corporation;

23 (b) the street and mailing address of its registered office and the name of its registered agent at
24 that office in this state;

25 (c) the street and mailing address of its principal office;

26 (d) the names and business addresses of its directors and principal officers;

27 (e) a brief description of the nature of its business;

28 (f) the total number of authorized shares, itemized by class and series, if any, within each class;

1 and

2 (g) the total number of issued and outstanding shares, itemized by class and series, if any, within
3 each class.

4 (2) Each foreign corporation registered to do business in this state shall deliver to the secretary of
5 state for filing an annual report that sets forth:

6 (a) the name of the foreign corporation and, if the name does not comply with 35-14-401, an
7 alternate name as required by 35-14-1506;

8 (b) the foreign corporation's jurisdiction of formation;

9 (c) the street and mailing addresses of the foreign corporation's principal office and, if the law of
10 the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that
11 jurisdiction, the street and mailing addresses of that office;

12 (d) the street and mailing addresses of the foreign corporation's registered office in this state and
13 the name of its registered agent at that office;

14 (e) the names and business addresses of its directors and principal officers; and

15 (f) a brief description of the nature of its business conducted in this state.

16 (3) Information in the annual report must be current as of the date the annual report is signed on
17 behalf of the corporation.

18 (4) The first annual report must be delivered to the secretary of state between January 1 and April
19 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign
20 corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of
21 state between January 1 and April 15 of subsequent years.

22 (5) If an annual report does not contain the information required by this section, the secretary of
23 state shall promptly notify the reporting domestic or foreign corporation in writing. The corrected report must be
24 filed by April 15 to be considered timely filed.

25 (6) Submission of a paper form to meet the requirements of this section is permissible pursuant to
26 2-15-401(3)."

27

28 **Section 72.** Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

- (a) the name of the proposed cooperative association;
- (b) its capital stock;
- (c) its location;
- (d) the duration of the association; and
- (e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in 35-14-202.

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state, subject to the provisions of 2-15-401(3), as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

Section 73. Section 35-15-204, MCA, is amended to read:

"35-15-204. Issuance of certificate of organization -- effect. (1) The commissioners shall make a full report of the first meeting, including a copy of the notice provided for in 35-15-203, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office. The report must be executed by at least a majority of the commissioners and must be filed in the office of the secretary of state, subject to the provisions of 2-15-401(3), along with any required filing fee. The secretary of state shall, upon filing the report, issue a certificate of the completed organization of the association.

(2) Upon the filing of the report of the first meeting and the statement of incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1), the association is considered to be fully organized and may engage in business."

1

2 **Section 74.** Section 35-15-205, MCA, is amended to read:

3 **"35-15-205. Amendment of articles of incorporation -- fee.** At any time after the filing of the
4 certificate of complete organization, the articles of incorporation may be amended. Any amendment of the
5 articles of incorporation must be first approved by two-thirds of the directors and then adopted by a vote of not
6 less than two-thirds of those stockholders voting on the issue at any regular meeting of the stockholders or at a
7 special meeting of the stockholders called for that purpose. A certificate setting forth the amendment must be
8 executed on behalf of the association by its president or vice president and attested to by its secretary. The
9 certificate must be filed in the office of the secretary of state, subject to the provisions of 2-15-401(3), who shall
10 issue a certificate of amendment of the articles of incorporation, for which the secretary of state must receive a
11 fee that is set and deposited in accordance with 2-15-405."

12

13 **Section 75.** Section 35-15-305, MCA, is amended to read:

14 **"35-15-305. Filing required to have benefit of certain provisions.** All cooperative corporations,
15 companies, or associations organized before March 5, 1915, and doing business under prior statutes or which
16 have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412
17 and be bound thereby on filing with the secretary of state, subject to the provisions of 2-15-401(3), a written
18 declaration, executed by the president and secretary, to the effect that ~~said the~~ cooperative company or
19 association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such
20 provisions."

21

22 **Section 76.** Section 35-15-504, MCA, is amended to read:

23 **"35-15-504. Filing of documents of merger or consolidation -- effective date.** (1) Within 30 days
24 after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the
25 plan and the manner of adoption ~~thereof shall~~ of the plan must be signed by the president or vice-president and
26 by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and
27 recorder of the county in which the principal office of the new or surviving association is located if the office is in
28 Montana and with the Montana secretary of state, subject to the provisions of 2-15-401(3).

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger."

Section 77. Section 35-16-204, MCA, is amended to read:

"35-16-204. Hearing of petition -- findings of court -- issuance of certificate of incorporation -- effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support ~~thereof of the petition~~ and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court ~~does find~~ finds that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed, subject to the provisions of 2-15-401(3), with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana."

Section 78. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file with the secretary of state, subject to the provisions of 2-15-401(3), articles of incorporation setting forth:

- (a) the name of the association;
- (b) the purposes for which it is formed;
- (c) the place where its principal business will be transacted;
- (d) the term for which it is to exist, which may be perpetual;
- (e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;
- (f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;
- (g) the designation of classes of members, if more than one;
- (h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

 - (i) the designation, preferences, limitations, and relative rights of each class;
 - (ii) which classes of stock are membership stock;
 - (iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and
 - (iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-14-202.

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association."

1

2 **Section 79.** Section 35-17-203, MCA, is amended to read:

3 **"35-17-203. Amendments to articles of incorporation.** At any time after filing, the articles of
4 incorporation may be amended. Any amendment of the articles of incorporation must be approved by a majority
5 of the directors and then adopted by vote of a majority of those members voting at any regular meeting of the
6 association or at a special meeting called for the purpose of amending the articles, unless the articles require
7 approval by a larger number of directors or members. A statement setting forth the amendment must be
8 executed and attested to on behalf of the association by its appropriate officers. The statement must be filed in
9 the office of the secretary of state, subject to the provisions of 2-15-401(3), who shall issue a certificate of
10 amendment of the articles of incorporation. A certified copy of the certificate of amendment must be filed in the
11 office of the county clerk for the county in which the principal office of the association is located."

12

13 **Section 80.** Section 35-17-204, MCA, is amended to read:

14 **"35-17-204. Adoption of chapter by existing associations.** Any corporation or association
15 organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or
16 members, be brought under the provisions of this chapter by limiting its membership and adopting the other
17 restrictions as provided ~~herein~~ in this chapter. It shall prepare one original and one copy of a statement signed
18 by its directors, ~~upon~~ on forms supplied by the secretary of state in accordance with 2-15-401(3), to the effect
19 that the corporation or association has by a majority vote of its stockholders or members decided to accept the
20 benefits and be bound by provisions of this chapter. Articles of incorporation ~~shall~~ must be filed as required in
21 35-17-202, except that they ~~shall~~ must be signed by the members of the board of directors. The filing fee ~~shall~~
22 ~~be~~ is the same as for filing an amendment to articles of incorporation."

23

24 **Section 81.** Section 35-17-504, MCA, is amended to read:

25 **"35-17-504. Filing of documents of merger or consolidation -- effective date.** (1) Within 30 days
26 after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the
27 plan and the manner of adoption ~~thereof~~ of the plan ~~shall~~ must be signed by the president or vice-president and
28 by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and

recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state, subject to the provisions of 2-15-401(3).

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located."

Section 82. Section 35-18-201, MCA, is amended to read:

"35-18-201. Name. (1) The name of each cooperative shall include the words "electric" or "telephone" and "cooperative" and the abbreviation "Inc."; ~~provided, however, such limitations shall not apply if, in~~ unless, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, subject to the provisions of 2-15-401(3), it shall appear appears that the cooperative desires to transact business in another state and is precluded ~~therefrom~~ from doing so by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words "electric" or "telephone" and "cooperative" ~~shall may~~ not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter."

Section 83. Section 35-18-204, MCA, is amended to read:

"35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment ~~shall must~~ be first approved by the board of trustees and ~~shall must~~ then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, ~~shall be deemed to be~~ is approved on the affirmative vote of not less than two-thirds of those members voting ~~thereon~~ on the proposed amendment at such the meeting.

(2) ~~Upon such~~ On the approval by the members, articles of amendment ~~shall must~~ be executed on

behalf of the cooperative by its president or vice-president and its corporate seal ~~shall~~must be affixed ~~thereto to~~
the articles of amendment and attested by its secretary. The articles of amendment ~~shall~~must recite in the
caption that they are executed pursuant to this chapter and ~~shall~~must state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the date of the filing of its articles of incorporation in the office of the secretary of state; and
- (d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and
annex ~~thereto to the articles~~ an affidavit stating that the provisions of this section were ~~duly~~ complied with.

(4) ~~Such~~The articles of amendment and affidavit ~~shall~~must be submitted to the secretary of state
for filing as provided in this chapter, subject to the provisions of 2-15-401(3)."

Section 84. Section 35-18-205, MCA, is amended to read:

"35-18-205. Change of principal office without amendment. A cooperative may, without amending
its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office
by filing a certificate of change of principal office executed by its president or vice-president, under its seal
attested by its secretary, in the office of the secretary of state, subject to the provisions of 2-15-401(3), and also
in each county office in which its articles of incorporation or any prior certificate of change of principal office of
~~such the~~ cooperative has been filed and paying the fees prescribed in this chapter in connection ~~therewith with~~
the filing. ~~Such~~The cooperative shall also, within 30 days after the filing of ~~such the~~ certificate of change of
principal office in any county office, file ~~therein in the county office~~ certified copies of its articles of incorporation
and all amendments ~~thereto to its articles of incorporation~~, if not already on file ~~therein in the county office.~~"

Section 85. Section 35-18-206, MCA, is amended to read:

"35-18-206. Existing corporations -- reorganization under chapter -- articles of conversion. Any
corporation organized under the laws of this state for the purpose, among others, of supplying electrical energy
in rural areas or telephone service may become subject to this chapter with the same effect as if originally
organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of the corporation into a cooperative under this chapter and proposed articles of conversion to give effect to the conversion must be first approved by the board of trustees or the board of directors, as the case may be, of the corporation. The proposed articles of conversion must recite in the caption that they are executed pursuant to this chapter and must state:

- (a) the name of the corporation prior to its conversion into a cooperative under this chapter;
- (b) the address of the principal office of the corporation;
- (c) the date of the filing of its articles of incorporation in the office of the secretary of state;
- (d) the statute or statutes under which the corporation was organized;
- (e) the name assumed by the corporation;
- (f) a statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;
- (g) the manner and basis of converting either memberships in or shares of stock of the corporation into memberships in the corporation after completion of the conversion; and
- (h) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of the corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of the corporation must then be submitted to a vote of the members or stockholders, as the case may be, of the corporation at any duly held annual or special meeting of the corporation, the notice of which must set forth full particulars concerning the proposed conversion. The proposition for the conversion of the corporation into a cooperative under this chapter and the proposed articles of conversion, with any amendments to the articles of conversion that the members or stockholders of the corporation choose to make, is considered to be approved upon the affirmative vote of not less than two-thirds of those members of the corporation voting on the articles of conversion at the meeting or, if the corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of the corporation represented at the meeting.

(3) Upon approval by the members or stockholders of the corporation, articles of conversion in the form approved by the members or stockholders of the corporation must be executed on behalf of the corporation by its president or vice president and its corporate seal must be affixed to the articles of conversion

and attested by its secretary or assistant secretary. The president or vice president executing the articles of conversion on behalf of the corporation shall also make and annex to the articles of conversion an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of the corporation into a cooperative under this chapter and the articles of conversion were complied with.

(4) The articles of conversion and affidavit must be submitted to the secretary of state for filing as provided in this chapter, subject to the provisions of 2-15-401(3).

(5) The term "articles of incorporation" as used in this chapter includes the articles of conversion of a converted corporation."

Section 86. Section 35-18-401, MCA, is amended to read:

"35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) ~~Such~~The articles of merger and affidavits ~~shall~~must be submitted to the secretary of state for filing as provided in this chapter, subject to the provisions of 2-15-401(3)."

Section 87. Section 35-18-402, MCA, is amended to read:

"35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) ~~Such~~The articles of consolidation and affidavits ~~shall~~must be submitted to the secretary of state for filing as provided in this chapter, subject to the provisions of 2-15-401(3)."

Section 88. Section 35-18-404, MCA, is amended to read:

"35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative ~~which~~that has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

- 1 (d) that the cooperative has not commenced business;
- 2 (e) that the amount, if any, actually paid in on account of membership fees, less any part ~~thereof of~~
- 3 the membership fees disbursed for necessary expenses, has been returned to those entitled ~~thereto to the fees~~
- 4 and that all easements shall have been released to the grantors;
- 5 (f) that no debt of the cooperative remains unpaid; and
- 6 (g) that a majority of the incorporators elect that the cooperative be dissolved.
- 7 (2) ~~Such~~ The articles of dissolution ~~shall~~ must be submitted to the secretary of state for filing as
- 8 provided in this chapter, subject to the provisions of 2-15-401(3)."

9

10 **Section 89.** Section 35-18-405, MCA, is amended to read:

11 **"35-18-405. Dissolution and winding up of cooperative that has commenced business.** A

12 cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following

13 manner:

14 (1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and

15 then the proposition that the cooperative be dissolved must be submitted to the members of the cooperative at

16 any annual or special meeting, the notice of which must set forth the proposition. The proposed voluntary

17 dissolution must be considered to be approved upon the affirmative vote of not less than two-thirds of all of the

18 members of the cooperative.

19 (2) Upon approval, a certificate of election to dissolve, designated the "certificate", must be

20 executed on behalf of the cooperative by its president or vice president and its corporate seal must be affixed to

21 the certificate and attested by its secretary or assistant secretary. The certificate must state the name of the

22 cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of

23 members who voted for and against the voluntary dissolution of the cooperative. The president or vice

24 president executing the certificate shall also make and attach to the certificate an affidavit stating that the

25 provisions of this subsection were complied with. The certificate and affidavit must be submitted to the

26 secretary of state for filing as provided in this chapter.

27 (3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative must

28 cease to carry on its business except to the extent necessary for the winding up of the cooperative, but its

corporate existence continues until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees has full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each member during the 7 years preceding the date of filing of the certificate or, if the cooperative has not been in existence for 7 years, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision has been made for payment or discharge and all of the remaining property and assets of the cooperative have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which must be executed on behalf of the cooperative by its president or vice president and its corporate seal must be affixed to the articles and attested by its secretary. The articles of dissolution must recite in the caption that they are executed pursuant to this chapter and must state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has previously delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of that office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made for payment or discharge;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice

president executing the articles of dissolution shall also make and attach to the articles an affidavit stating that the provisions of this subsection (6) were complied with. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection (6), must be submitted to the secretary of state for filing as provided in this chapter.

(7) Submission of a paper form to meet the requirements of this section is permissible pursuant to 2-15-401(3)."

Section 90. Section 35-18-501, MCA, is amended to read:

"35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution -- effect of filing -- transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and accompanied by affidavits that may be required by applicable provisions of this chapter, must be presented to the secretary of state for filing, subject to the provisions of 2-15-401(3). If the secretary of state finds that the articles presented conform to the requirements of this chapter, the secretary of state shall upon the payment of the fees as provided in this chapter file the articles, and upon filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution is in effect.

(2) The secretary of state, immediately upon the filing of any articles pursuant to this chapter, shall transmit a certified copy to the county clerk of the county in which the principal office of each cooperative or corporation affected by the incorporation, amendment, consolidation, merger, conversion, or dissolution is located. The clerk of any county, upon receipt of any certified copy, shall file and index the copy in the records of that office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2)."

Section 91. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written

1 certificate, which must state:

2 (a) the names of the associates who attended the meeting;

3 (b) the corporate name of the association determined by a majority of the persons who met;

4 (c) the number of persons agreed upon to manage the concerns of the association;

5 (d) the names of the trustees chosen at the meeting and their classification;

6 (e) the day of the year identified for the annual election of trustees and the manner of their

7 election.

8 (2) In addition to provisions required in subsection (1), the document of incorporation may also

9 contain provisions not inconsistent with law regarding liability as set forth in 35-14-202(2)(d).

10 (3) The certificate must be signed by the presiding officer and secretary and acknowledged by
11 them before some person authorized to take acknowledgments within the state of Montana. They shall cause
12 the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which
13 the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of
14 the state of Montana, subject to the provisions of 2-15-401(3), who shall issue a certificate of filing without
15 charge."

16 - END -